
Introduced by Senator Campbell

February 16, 2005

An act to repeal and add Part 3 (commencing with Section 21300) of Division 11 of the Probate Code, relating to no contest clauses.

LEGISLATIVE COUNSEL'S DIGEST

SB 296, as introduced, Campbell. No contest clauses.

Existing law establishes the procedures by which a person may apply to the court for a determination of whether specified actions would constitute contests within the terms of a no contest clause in an instrument.

This bill would repeal existing provisions of law relating to no contest clauses. The bill would instead provide that a provision in an instrument rescinding a donative transfer or otherwise penalizing a person for initiating, responding to, or otherwise participating in any legal proceeding, as described, is unenforceable, except as specified. The bill would enable a court to award attorney's fees and costs against the prevailing party if certain conditions are satisfied. The bill would apply to all persons dying after the operative date of January 1, 2007, and to all instruments that become irrevocable after that operative date.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21309 is added to the Probate Code, to
2 read:
3 21309. This part shall remain in effect only until January 1,
4 2007, and as of that date is repealed, unless a later enacted

1 statute, which is enacted before January 1, 2007, deletes or
2 extends that date.

3 SEC. 2. Part 3 (commencing with Section 21300) is added to
4 Division 11 of the Probate Code, to read:

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6 PART 3. NO CONTEST CLAUSES AND OTHER
7 FORFEITURES NOT ENFORCED

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9 21300. A provision in an instrument rescinding a donative
10 transfer or otherwise penalizing a person for initiating,
11 responding to, or otherwise participating in any legal proceeding,
12 including filing a creditor's claim, whether in a court of law, a
13 mediation, arbitration, administrative hearing, or otherwise, is
14 unenforceable. Nothing within this section is intended to prohibit
15 conditional gifts under an instrument, except as provided in this
16 part.

17 21301. Regardless of whether the instrument contains a
18 provision described in Section 21300, a court may award
19 reasonable attorney's fees and costs against the unsuccessful
20 party and in favor of the prevailing party if both of the following
21 apply:

22 (a) The proceeding in question involves the alleged invalidity
23 of an instrument or one or more of its terms based on one or
24 more of the following grounds:

25 (1) Revocation.

26 (2) Lack of capacity.

27 (3) Fraud.

28 (4) Misrepresentation.

29 (5) Menace.

30 (6) Duress.

31 (7) Undue influence.

32 (8) Mistake.

33 (9) Lack of due execution.

34 (10) Forgery.

35 (b) The court determines that the unsuccessful party asserted
36 or opposed one or more of the grounds set forth in subdivision
37 (a) without reasonable cause.

38 21302. For purposes of this part, "reasonable cause" means
39 that the unsuccessful party has knowledge of acts that would
40 cause a reasonable person to believe that the factual allegations

1 and other contentions made by that party and filed with the court
2 may be proven or, if specifically so identified, are likely to be
3 proven after a reasonable opportunity for further investigation or
4 discovery.

5 21303. This part applies to all instruments, whenever
6 executed, of persons dying on or after the operative date of this
7 part and to instruments that become irrevocable on or after that
8 operative date.

9 21304. This part shall become operative on January 1, 2007.

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